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 7 VAXGEN, INC. and LISA BROOKS

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 10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

12 ARIA RAZBAN,

No. C 07-03136 JL

13 Plaintiff,

~~PROPOSED~~ ORDER GRANTING  
 DEFENDANTS VAXGEN AND LISA  
 BROOKS' UNOPPOSED MOTION TO  
 COMPEL INDEPENDENT MENTAL  
 EXAMINATION OF PLAINTIFF ARIA  
 RAZBAN PURSUANT TO FEDERAL RULE  
 OF CIVIL PROCEDURE 35

14 VAXGEN, INC., a Delaware corporation,  
 15 LISA BROOKS, and DOES 1 through 50,  
 inclusive,

16 Defendants.

17 Complaint Filed: January 19, 2007  
 First Am. Compl. Filed: May 16, 2007  
 First Am. Compl. Served: June 1, 2007  
 Trial Date: Not Yet Set

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 20 Having considered the parties' papers, the Court finds that, pursuant to Rule 35 of the  
 21 Federal Rules of Civil Procedure, good cause exists to grant defendants VaxGen, Inc. and Lisa  
 22 Brooks' (collectively, "Defendants") Unopposed Motion to Compel Independent Mental  
 23 Examination of Plaintiff Aria Razban. Accordingly, the Court hereby grants Defendants'  
 24 unopposed motion.

25 **IT IS THEREFORE ORDERED THAT:**

26 1. Aria Razban ("Plaintiff") submit to, cooperate with, and complete an independent  
 27 mental examination ("IME") on or before June 13, 2008. This IME shall consist of two parts.

1 The first portion of the IME will include a brief interview and thereafter psychological testing  
2 conducted by Dr. Dale McNeil, a licensed clinical psychologist, which will be a maximum of  
3 eight (8) hours (exclusive of breaks), to be completed on a day to be mutually agreed upon  
4 between the parties. Although the ultimate selection of tests used will be based upon  
5 Dr. McNeil's professional judgment and experience, such tests may include, but are not limited  
6 to, short answer "pencil and paper" tests to assess personality factors and patterns as well as  
7 specific psychological symptoms, cognitive tests to assess thinking and any impairments in  
8 thought processes, and projective tests to evaluate psychological defenses and other underlying  
9 psychological factors.

10       2. In addition, Plaintiff is ordered to submit to, cooperate with and complete the  
11 second portion of the IME, which will occur on a separate day to be mutually agreed upon  
12 between the parties. This second portion of the examination will consist of a formal forensic  
13 psychiatric interview with Dr. Renee L. Binder, a board-certified psychiatrist, which will be a  
14 maximum of six (6) hours (exclusive of breaks), and will consist of a mental status examination,  
15 an assessment of Plaintiff's current functioning and complaints, and information about Plaintiff's  
16 allegations in this lawsuit. Dr. Binder also will be permitted to obtain a complete history of  
17 Plaintiff through the examination, which will include, but is not limited to, Plaintiff's recent and  
18 past personal, family, development, medical, psychiatric, educational, employment, occupational,  
19 marital, relationship, and legal histories. Dr. Binder also will be permitted to obtain a history of  
20 Plaintiff's strengths and vulnerabilities during her life, including information about past stresses  
21 and how she dealt with them. To determine the extent and causation of Plaintiff's emotional  
22 distress related to the events in this lawsuit, Dr. Binder will be permitted to obtain information  
23 about Plaintiff's pre-existing conditions and other possible stressors that may have impacted  
24 Plaintiff during her employment and thereafter.

25       3. During each of the examinations of the IME, Plaintiff shall answer all proper  
26 questions and inquiries submitted to her by the examiner, including occupational history and prior  
27 injuries and diseases for the purpose of making a proper diagnosis of Plaintiff's condition.

28       4. Neither Plaintiff's counsel nor Defendants' counsel will be present during the

1 examinations. However, both Plaintiff and Defendants will be permitted to audiotape the  
2 examinations in their entirety.

3       5. Should Plaintiff fail to attend a scheduled examination with Dr. Binder and/or  
4 Dr. McNeil without providing written advance notice of the cancellation to Defendants' counsel  
5 within at least five (5) business days of a scheduled examination, Plaintiff shall bear any and all  
6 cancellation fees charged by the examiners. Moreover, should Plaintiff fail to submit to,  
7 cooperate with, and complete the two distinct portions of the IME ordered herein, she will be  
8 barred from introducing evidence at trial pertaining to her claims for mental, emotional,  
9 psychiatric and/or psychological injury, and any harm relating thereto, and shall be barred from  
10 seeking damages with respect thereto.

11       **IT IS SO ORDERED.**

12       April 16, 2008  
13 Dated: \_\_\_\_\_



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Honorable James Larson  
United States Chief Magistrate Judge

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